IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1760 OF 2006.

Dnyanu Bhau Chougule
deceased through heirs
Pandurang Dnyanu Chougule and ors. ... Petitioners.
Versus.
Dattatraya Keshav Bhandari. ... Respondent.

Shri Amit Borkar for the Petitioners.

Shri S.S.Patwardhan for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 27th February, 2007.

P.C.:

1. The submissions of the learned Advocates for the parties were heard on the last date. By this petition under Article 227 of the Constitution of India, the Petitioners have challenged the order dated 1st December 2005 passed by the learned Adhoc Additional District Judge, Kolhapur. By the said order, the Application made by the Petitioners in pending Appeal for amendment of the plaint has been rejected. The Petitioners are the original Plaintiffs and the Respondent is the original Defendant. The suit for perpetual injunction filed by the Petitioners has been dismissed by the trial Court and the appeal preferred against the decree of dismissal by the Petitioners is pending in the District Court. The application for amendment of the plaint at Exh.18 was made by the Petitioners seeking amendment to paragraph 1 of the plaint for the purpose of incorporating the boundaries of the suit property. The amendment is also sought to paragraph 3 of the plaint for the purpose of referring to the sale deed dated 2nd

May 1953 executed by the predecessor-in-title of the Petitioners. The Application for amendment has been rejected on the ground that the same has been belatedly filed and the same will change the nature of the suit.

2. The learned Counsel for the Petitioners submitted that it is obvious that the amendment will not change the nature of the suit. He has placed on record the affidavit of Petitioner No.2 Shri Dinkar Dnyanu Chougule in which an undertaking is recorded that in the event the application for amendment is allowed, the Petitioners will not lead any oral evidence in support of the amended plaint except for producing the certified copy of the Judgment and Decree in Regular Civil Suit No. 157 of 1997. The learned Counsel for the Petitioners states that even the other Petitioners have instructed him to make the same statement. The learned Counsel for the Respondent has opposed this petition by contending that no interference is called for.

3. I have perused the application for amendment of the plaint. A perusal of the text of the amendment clearly shows that the Petitioners want to give further particulars and by no stretch of imagination, the amendment will change the nature of the suit. The Petitioners have given undertaking not to lead any oral evidence if amendment is permitted. Considering the nature of the proposed amendment and considering the

undertaking given by the Petitioners, in my view the amendment deserves to be allowed.

4. Hence the following order is passed:

i) The impugned Judgment and order is quashed and set aside. The application at Exh.18 in Reg.Civil Appeal No.216 of 2000 is allowed. The amendment to be carried out within a period of two weeks from the date of receipt of writ this order by the Appellate Court. The undertaking given by the Petitioners which is recorded in the Judgment is accepted. Thus it will not be open for the Petitioners to apply for any oral evidence to be led and the Petitioners will be permitted to produce only the certified copy of the Judgment as well as the certified copy of the decree passed in Reg.Civil Suit No.157 of 1997.

ii) It is open for the Respondent to file additional written statement to the amended plaint within eight weeks from the date on which the amendment is carried out.

iii) All contentions of the parties in the pending Appeal are kept open.

iv) No order as to costs.

Judge.